
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

TERRADI M.,

Plaintiff,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social
Security,

Defendant.

**ORDER ADOPTING MAGISTRATE
JUDGE’S REPORT AND
RECOMMENDATION**

Case No. 2:23-cv-00172-TC-JCB

District Judge Tena Campbell
Magistrate Judge Jared C. Bennett

Before the court is Magistrate Judge Jared C. Bennett’s unobjected-to Report and Recommendation. (R. & R., ECF No. 12). Judge Bennett recommends the court dismiss this action without prejudice. Id. at 3. For the reasons discussed below, the court adopts Judge Bennett’s Report and Recommendation in full and dismisses the case without prejudice.

I. BACKGROUND

Terradi M. (“Plaintiff”), acting pro se, filed this action on March 10, 2023. (Compl., ECF No. 2). In her complaint, Plaintiff alleges that “They are denying my disability [i]nsurance benefits when I am currently disabled.” Id. at 3. She argues that this decision was not supported by substantial evidence. Id. at 4.

On May 9, 2023, Defendant Acting Commissioner of Social Security Kilolo Kijakazi (“Commissioner”) filed her answer and the administrative record. (ECF No. 9). As is noted, in bolded font, in the related docket entry, “Under Supplemental Rule 6 [of the Federal Supplemental Rules for Social Security], Plaintiff[‘s] Motion for Review of Agency Action must be filed and served by 6/8/2023.” Id. Plaintiff did not file a motion for review of agency action by the June 8, 2023 deadline.

Following Plaintiff's failure to file such a motion by the deadline noted on the docket, Judge Bennett issued an order to show cause ("OSC") on June 16, 2023. (ECF No. 11).¹ The OSC ordered "Plaintiff to show cause why this action should not be dismissed for lack of prosecution." Id. at 1 (citing DUCivR 41-2). The OSC also stated that "Plaintiff must file a response to this order to show cause on or before June 30, 2023, to inform the court of the status of this action and Plaintiff's intentions to proceed." Id. at 1-2. Finally, the OSC warned Plaintiff that "Failure to do so may result in dismissal of this action." Id. at 2. In a footnote following this warning, the OSC included the explanation that if a "party does not show good cause, a district judge or a magistrate judge presiding by consent may enter an order of dismissal. The dismissal may be with or without prejudice, as the court deems proper." Id. at 2 n.4 (quoting DUCivR 41-2). As of the date of this Order, Plaintiff has not filed anything with the court in response to the OSC.

Following Plaintiff's failure to respond to the OSC, Judge Bennett issued his Report and Recommendation on July 21, 2023. (ECF No. 12). In it, he explains the above-summarized history, and how "Given that procedural history, this case should be dismissed without prejudice for failure to prosecute under Fed. R. Civ. P. 41(b) and the court's inherent authority." Id. at 2. Judge Bennett recommends that the case be dismissed without prejudice. Id. at 3. The Report and Recommendation concludes by stating that "Copies of this Report and Recommendation are being sent to all parties, who are hereby notified of their right to object." Id. at 3 (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2)). And that "The parties must file any objections to this Report and Recommendation within 14 days after being served with a copy of it." Id. (citing

¹ This case was referred to Judge Bennett under 28 U.S.C. § 636(b)(1)(B) on March 31, 2023. (ECF No. 8).

28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2)). Finally, the Report and Recommendation explicitly warns that “Failure to object may constitute waiver of objections upon subsequent review.” Id. As of the date of this Order, neither party has filed any objections to the Report and Recommendation. Plaintiff has also not filed any response to the OSC.

II. LEGAL STANDARD

Plaintiff is pro se. While the court liberally construes pro se pleadings, Plaintiff’s pro se status does not excuse her obligation to comply with the fundamental requirements of the Federal Rules of Civil Procedure. Jenkins v. Haaland, No. 2:21-cv-00385, 2023 WL 196159, at *2 (D. Utah Jan. 17, 2023) (citing Ogden v. San Juan Cnty., 32 F.3d 452, 455 (10th Cir. 1994)). Plaintiff has not objected, or otherwise responded, to Judge Bennett’s Report and Recommendation. The court reviews an unobjected-to report and recommendation for clear error. See id. at *2, *4.

III. ANALYSIS

As noted above, Judge Bennett recommends dismissal under Rule 41(b). “Rule [41(b)] has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court’s orders.” Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003) (citing Link v. Wabash R.R. Co., 370 U.S. 626, 630–31 (1962)). The District of Utah’s local rules also enable the court to, at any time, “issue an order to show cause requiring a party seeking affirmative relief to explain why the case should not be dismissed for lack of prosecution.” DUCivR 41-2.

Under DUCivR 41-2, “If [a] party [that has been ordered to show cause,] does not show good cause, a district judge or a magistrate judge presiding by consent may enter an order of dismissal. The dismissal may be with or without prejudice, as the court deems proper.” The

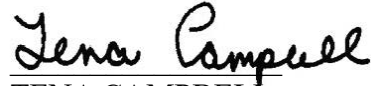
Plaintiff in this action failed to show good cause after being ordered to do so. Judge Bennett did not clearly err in recommending dismissal without prejudice, given Plaintiff's failure to prosecute this action.

IV. ORDER

The court has carefully reviewed the Report and Recommendation and this case's docket. It is satisfied that Judge Bennett properly applied the law in this case, and the court discerns no clear error. For that reason, the court ADOPTS the Report and Recommendation (ECF No. 12) in its entirety. The court DISMISSES this case WITHOUT PREJUDICE.

DATED this 10th day of August, 2023.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL

United States District Judge